S.B.CIVIL WRIT PETITION NO.973/2004

Miss Kalawati Swami
v.
State of Rajasthan & Ors.

Date of Order :: 14th November, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.G.Ojha, for the petitioner.
Mr. B.L.Tiwari, Dy.G.A.

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In pursuant to the notification dated 28.7.2003 the petitioner submitted an application to be considered for appointment as Physical Training Instructor Gr.III in District Bikaner against existing 68 vacancies in boys schools and 8 vacancies in girls schools. The petitioner being a member of Other Backward Class claimed to be considered for the vacancies reserved for that category. The respondents after holding regular selection proceedings made appointment of number of persons as Physical Training Instructor having less marks than the petitioner, hence this petition for writ is preferred.

It is contended by counsel for the petitioner that the petitioner secured 78.76% merit marks whereas the respondents No.7 to 11 have secured quite less marks to her but they have been employed by the respondents as Physical Training Instructors Gr.III.

In reply to the writ petition it is admitted by the respondent State that the respondents No.7 to

11 secured less merit marks than the petitioner but appointment was not given to the petitioner as she applied to be considered for appointment in Other Backward Classes category where the cut off marks is quite higher and no person having less merit marks than the petitioner in that category is given appointment. It is also stated that the respondents No.7 to 11 do not belong to any category for which reservation is applicable, meaning thereby they are from general candidates.

Heard counsel for the parties.

The respondents admittedly have given appointment to the persons belonging to general category, those are the respondents No.7 to 11 though having merit marks less than the petitioner. The appointment to the petitioner has been denied only on the count that she belongs to Other Backward Classes and no person having marks less to her is given appointment in that category. It is well settled that a person applying to be considered for appointment against the vacancies reserved for specific category is also required to be considered against unreserved vacancies and if such person stands in merit then the appointment is required to be given to such person against the vacancies unreserved. The respondents, therefore, should have considered candidature of the petitioner also against those vacancies that do not

pertain to reserved categories and in common parlance known as general vacancies.

In view of whatever discussed above the respondents have illegally denied appointment to the petitioner by considering her candidature only against the vacancies reserved for Other Backward Classes and by not considering her candidature against the general vacancies.

Accordingly, this petition for writ is allowed. The respondents are directed to appoint the petitioner as Physical Training Instructor Gr.III from the date appointment is accorded to the persons belonging to general category and having less merit marks than her in the select list prepared in pursuant to the selection proceedings taken place in pursuant to the advertisement dated 28.7.2003.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.